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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-482

THE HON. ROBERT K. SMITH, JUDGE, ET AL., ETC.,
Petitioners,

vs.

STATE EX REL. DAILY MAIL PUBLISHING CO., ETC. ET AL.,
Respondents.

THE HON. ROBERT K. SMITH, JUDGE, ET AL., ETC.,
Petitioners,

vs.

DON MARSH, ET AL., THE DAILY GAZETTE CO., ETC. ET AL.,
Respondents.

MOTION OF CHICAGO TRIBUNE COMPANY FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE

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INDEX

	PAGE
Motion of The Chicago Tribune Company for Leave to File Brief as Amicus Curiae	A1
Brief for Chicago Tribune Company as Amicus Curiae...	1
Argument	1
I. Publication of the Names of Juveniles is Rare.	2
II. Publication of the Names of Juveniles Who Commit Serious, Violent Crime Does Not Jeopardize Rehabilitation	4
Conclusion	6

CITATIONS

Cases.

Brian W. v. *Superior Court*, 20 Cal. 618, 143 Cal. Rptr. 717, 574 P.2d 788 (1978)	3
Cox Broadcasting Corporation v. *Cohn*, 429 U.S. 469 (1975)	2
In re R.L.K. Jr. v. *Minnesota*, 269 N.W.2d 367 (Minn. 1978)	3
Grosjean v. *American Press Co.*, 297 U.S. 233 (1936)	6
Keene Publishing v. *Keene District Court*, 3 Med. L. Rptr. 1595 (New Hamp. S.C. 1977)	3
Landmark Communications, Inc. v. *Commonwealth of Virginia*, 435 U.S. 829 (1978)	2
Nebraska Press Association v. *Stuart*, 427 U.S. 539 (1976)	5
New York v. *Green*, 4 Med. L. Rptr. 1561 (N.Y. Sup. Ct. 1978)	2
Oklahoma Publishing Company v. *District Court of Oklahoma County*, 430 U.S. 308 (1977)	2

Statutes.

West Virginia Code 49-7-3	1-2

Miscellaneous.

Friendly & Goldfarb, *Crime & Publicity* 58 (1967) 3, 4

Geis, *Publication of the Names of Juvenile Felons,* 23 Mont. L. Rev. 141 (1962) 3

LeWine, *What Constitutes Prejudicial Publicity in Pending Cases?* 51 A.B.A.J. 942 (1965) 5

Manella, *The Hard-Core Juvenile Offender,* National Council of Juvenile Court Judges Monograph (1977). 4

Silberman, *Criminal Violence, Criminal Justice* 49 (1978) 2, 4

Statement of National Council of Juvenile Court Judges, *reprinted in* Standard Juvenile Court Act, Comment § 33 (NPPA 1959) 3

Trojonowicz, *Juvenile Delinquency Concepts and Control* 27 (1978) 2

Wolfgang, Figlio & Sellin, *Delinquency in a Birth Cohort* 65-105 (1972) 4

"The Youth Crime Plague", Time 18-19 (July 11, 1977) 2

Sen. Rep. No. 93-1011, 93rd Cong. 2d Sess. *reprinted in* 1974 U.S. Code Cong. & Ad. News 5283 5

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MOTION OF THE CHICAGO TRIBUNE COMPANY FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The Chicago Tribune Company respectfully requests leave to file the attached brief *amicus curiae* in this case. The consent of the attorneys for respondents has been obtained. The consent of the attorney for the petitioner was sought but refused.

The Chicago Tribune Company publishes the *Chicago Tribune*, one of the nation's largest metropolitan daily and Sunday newspapers. The *Chicago Tribune* is published in

Chicago, Illinois. Although the vast bulk of the *Chicago Tribune's* circulation is within the State of Illinois, it has circulation in West Virginia and every other state in the union.

The *Chicago Tribune* is deeply and vitally committed to the preservation and advancement of First Amendment freedom of the press. In support of this long-standing commitment, the *Chicago Tribune* and its parent-owner, The Tribune Company, have a well established practice of appearing, on a selective basis, in litigation that substantially affects the news media. See *Nebraska Press Association* v. *Stuart*, 427 U.S. 539 (1976); *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974); *Associated Press* v. *Walker*, 388 U.S. 130 (1967); *New York Times* v. *Sullivan*, 376 U.S. 254 (1964); *Near* v. *Minnesota*, 283 U.S. 697 (1931).

The *Chicago Tribune* publishes news accounts of crimes that occur in metropolitan Chicago and across the nation. The *Chicago Tribune* infrequently publishes the names of juvenile criminals, but does believe it is proper, and upon occasion it does in fact do so, in cases of serious, violent crime. The policy of the newspaper is to refrain from publishing the names of youth offenders in connection with "status" and other minor offenses of juvenile delinquency. Because a state seeks license to impose criminal sanctions on two newspapers for the publication of a juvenile murderer's name in this case, the *Chicago Tribune* has a vital interest in this Court's decision.

The attached brief *amicus curiae* concentrates on the true incidence of juvenile name publication and the impact of such publicity on the juvenile and the community. Rather than present argument from judicial precedents, the brief argues from practical reality and common sense principles. Petitioner's Brief neither examines the frequency of delinquency name publicity nor analyzes its effects, and we expect the Respondents' Brief will focus on the substantial First Amendment and Equal Protection precedents that support the judgment below.

Accordingly, we believe that the *Tribune's* brief will provide an additional and practical insight and assist the Court's resolution of the case.

Respectfully submitted,

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BRIEF FOR CHICAGO TRIBUNE COMPANY AS AMICUS CURIAE

May It Please the Court:

The Chicago Tribune Company respectfully submits this brief as *amicus curiae*. The interest of the Chicago Tribune Company as *amicus* is fully presented in the motion for leave to file this brief bound herewith.

ARGUMENT

A unanimous West Virginia Supreme Court and Respondents have cogently demonstrated the First Amendment infirmity of West Virginia's newspaper juvenile-name ban, West

Virginia Code 49-7-3. *Landmark Communications, Inc.* v. *Commonwealth of Virginia*, 435 U.S. 829 (1978); *Oklahoma Publishing Company* v. *District Court of Oklahoma County*, 430 U.S. 308 (1977); and *Cox Broadcasting Corporation* v. *Cohn*, 429 U.S. 469 (1975). We will not duplicate that discussion.

We shall examine the true incidence of delinquent name reports and the impact of publicity on juveniles and the community. Like the controversy over publicity and fair trials, we believe that the claimed conflict between press freedom and juvenile rehabilitation is rare, if extant at all. In any case the West Virginia statute furthers no interest in juvenile redemption, and there is no cause to muzzle the press, especially under the threat of criminal sanction.

I.

PUBLICATION OF THE NAMES OF JUVENILES IS RARE

Juvenile crime today is on a sharp up-surge and is a subject of ever-increasing public concern and scrutiny. Today, 40 percent of all serious, violent crime is committed by persons seventeen years of age or younger.[1] Silberman, *Criminal Violence, Criminal Justice* 49 (1978). This represents over a 175 percent increase in serious juvenile crime since 1960. Trojonowicz, *Juvenile Delinquency Concepts and Control* 27 (1978). The public has responded, re-evaluating the juvenile justice system and, in many cases, lowering the age of majority for adult criminal sanctions. *New York* v. *Green*, 4 Med. L. Rptr. 1561 (N.Y. Sup. Ct. 1978). *See* "The Youth Crime Plague", *Time* 18-19 (July 11, 1977). In short, the juvenile justice system more than ever before is news—important news.

[1] We use the shorthand reference "serious, violent crime" in this brief to refer to the seven crimes of the FBI's Crime Index. These crimes are murder, aggravated assault, robbery, rape, burglary, larceny-theft, and auto theft.

Believing that publication of the minor misdeeds of youth serves no useful purpose, the *Chicago Tribune* refrains from publishing juvenile identities in all but the most serious crimes. Murder, rape, and robbery are the crimes that terrorize society, and these are precisely the kinds of cases that should receive full public airing if the nation is ever to understand the root causes of the juvenile crime wave. Far from frustrating the process, that inquiry exposes the weaknesses of society's response to this ever-increasing problem.

Historically, the media have treated the juvenile offender with extreme sensitivity. Statement of National Council of Juvenile Court Judges, *reprinted in* Standard Juvenile Court Act, Comment § 33 (NPPA 1959). In many instances, the press has voluntarily withheld the names of accused juveniles. *See, e.g., In re R.L.K. Jr.* v. *Minnesota*, 269 N.W.2d 367 (Minn. 1978); *Brian W.* v. *Superior Court*, 20 Cal. 618, 143 Cal. Rptr. 717, 574 P. 2d 788 (1978); *Keene Publishing* v. *Keene District Court*, 3 Med. L. Rptr. 1595 (New Hamp. S.C. 1977). Only the chronic offender or the local *cause celebre*, like the senseless high school slaying here, has drawn the media's critical evaluation and prompted public controversy. Geis, *Publication of the Names of Juvenile Felons*, 23 *Mont. L. Rev.* 141, 145 (1962).

The publication of juvenile identities in fact is rare. Judge Skelly Wright estimates that less than one percent of the hundreds of thousands of crimes committed each year receive any mention at all in the press. Friendly & Goldfarb, *Crime & Publicity* 58 (1967). Given the special concern the press has historically manifested toward the juvenile, we suspect that the true incidence of juvenile crime reporting is even far less than the Wright estimate. Indeed, this is apparently the first prosecution under the West Virginia law since its adoption almost 40 years ago. The problem, if one exists at all, cannot be too great.

Accordingly, we think it unfortunate and unnecessary that the State of West Virginia has instituted this criminal prosecution and prompted this confrontation.

II.

PUBLICATION OF THE NAMES OF JUVENILES WHO COMMIT SERIOUS, VIOLENT CRIME DOES NOT JEOPARDIZE REHABILITATION

Seldom has there been a case where a State has offered so little to abridge a newspaper's freedom to publish. The sole basis upon which petitioner asks this Court to sustain the West Virginia name-ban is the speculative hope that a newspaper's silence may somehow help a juvenile murderer to mend his ways. Common sense teaches that this is simply not true.

First. Newspapers publish stories about serious, violent crime. Friendly & Goldfarb, *Crime & Publicity* 59-64 (1967). Over 90 percent of the serious, violent crimes committed by juveniles are committed by multiple-offenders. Wolfgang, Figlio & Sellin, *Delinquency in a Birth Cohort* 65-105 (1972). These hard core delinquents typically have long histories of criminal, deviant behavior, hold deeply-rooted, anti-social values, and are hostile, alienated personalities. Publication of their names poses no real threat to their redemption. Manella, *The Hard-Core Juvenile Offender*, National Council of Juvenile Court Judges Monograph (1977).

The juvenile offender who has an occasional brush with the law does not commit serious, violent crimes. His wrong is typically a "status offense" of passing consequence (such as truancy). Silberman, *Criminal Violence, Criminal Justice* 49-50 (1978). As a practical matter, his name will not find its way into the media.

Second. Publicity has little, if any, impact upon the serious, violent juvenile offender. The immediate impact of a news report is lost in the trauma of the crime and the juvenile's

confrontation with the State. The criminal act, the arrest, the lock-up, and the ordeal of the urban juvenile court are stark, overwhelming life events. The juvenile's psychological and emotional realization of his plight is numbing. Any finding of delinquency is made by the State, and if such labels frustrate rehabilitation over time, it is the State, and not the media, that is responsible. *See* Sen. Rep. No. 93-1011 93rd Cong. 2d Sess. *reprinted in* 1974 U.S. Code Cong. & Ad. News 5283, 5288.

Third. The impact of publicity upon the community is similarly negligible at best. In truth, the juvenile offender here lost his anonymity the moment he shot and killed his fellow student at school. The high school, his parents, and his peers soon heard of the crime, and word of the deed raced over the grapevine. As this Court has recognized, "a whole community cannot be restrained from discussing a subject intimately affecting life within it." *Nebraska Press Association* v. *Stuart*, 427 U.S. 539, 567 (1976).

Over time the impact of the publicity rapidly dissipates. People just do not remember the news from one day to the next. LeWine, *What Constitutes Prejudicial Publicity in Pending Cases*? 51 A.B.A.J. 942, 945 (1965). Thus, to argue that newspaper identification of the juvenile today impacts upon the community's treatment of the juvenile ten years from now strains credulity.

These three general principles apply with special force to the peculiar facts of this case. *Before* respondents had even published the juvenile's identity, local radio stations—which are not subject to the name-ban—had identified the offender on the air. The State simply cannot expect that the publication of a juvenile's name will jeopardize his rehabilitation when it permits the broadcast media to trumpet his name at will and magazines to memorialize his name and crime in print.[2]

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[2] The West Virginia statute is a textbook denial of Equal Protection. Only newspapers are subject to criminal penalty; radio

(footnote continued on next page)

In summary, we seriously question the notion that the publication of the name of a serious, violent juvenile offender interferes with his rehabilitation. While we hold similar doubts about the impact of publicity on the occasional delinquent, such cases seldom arise. We are confident that when and if such publications might arguably threaten the futures of youth offenders, a responsible dialogue between the media and juvenile authorities can and will accommodate the interests involved. Prior restraint is not the answer.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the West Virginia Supreme Court should be affirmed.

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and television broadcasters and other print media suffer no exposure. While the Court could summarily affirm on this basis, we urge the Court to affirm the judgment on First Amendment grounds. *Grosjean* v. *American Press Co.*, 297 U.S. 233, 251 (1936). Any other result, we fear, may cast doubt upon the West Virginia holding and unintentionally encourage bogus pleas for the suppression of public records, burdening the courts as well as the press with costly, needless litigation.